

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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LARENZO LOMAX — PETITIONER

vs.

DARREL VANNOY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT CERTIORARI

LARENZO LOMAX

598660, OAK—2

LOUISIANA STATE PENITENTIARY

ANGOLA, LA 70712

**QUESTION(S) PRESENTED**

- 1) Whether Lomax was denied the effective assistance of counsel when his trial attorney failed to challenge the legality of Lomax's arrest.
- 2) Whether Lomax was denied the effective assistance of counsel when his trial counsel failed to challenge the Affidavit in Support of Search Warrant that contained intentional false material statements.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Larenzo Lomax  
Louisiana State Penitentiary  
Angola, LA 70712

Warren Montgomery, District Attorney  
Justice Center, 701 N. Columbia St.  
Covington, LA 70433-2709

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

**[x] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix "?" to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] unpublished.

The opinion of the United States district court appears at Appendix "?" to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] unpublished.

**[x] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix "?" to the petition and is

[x] reported at State v. Lomax, 2013-0889 (La. 11/15/13), 125 So.3d 1000; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] unpublished.

The opinion of the Louisiana First Circuit court of appeal court appears at Appendix "?" to the petition and is

[ ] reported at State v. Lomax, 2013 WL 1189446 (3/22/13); or,  
[ ] has been designated for publication but is not yet reported; or,  
[x] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 3, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was October 17, 2016.

A copy of that decision appears at Appendix E.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**The Fourth Amendment to the United States Constitution provides that:**

**The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.**

**The Fifth Amendment to the United States Constitution provides in pertinent part:**

**No person shall be held to answer for a capital, or otherwise infamous crime....nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty. Or property without due process of law[.]**

**The Sixth Amendment to the United States Constitution provides in pertinent part:**

**In all criminal prosecutions, the accused shall enjoy the right....have the assistance of counsel for his defence.**

**The Fourteenth Amendment to the United States Constitution provides in pertinent part:**

**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

**Louisiana Constitution Article 1, § 2**

**Due Process of Law. No person shall be deprived of life, liberty, or property, except by due process of law**

**Louisiana Constitution Article 1, § 3**

**Right to individual Dignity. No person shall be denied the equal protection of the laws.**

Louisiana Constitution Article 1, § 5

**Right to Privacy.** Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.

Louisiana Constitution Article 1, § 13

**Rights of the Accused.**

Louisiana Constitution Article 1, § 16

**Right to a Fair Trial.**

Louisiana Constitution Article 1, § 19, in pertinent part provides

**Right to Judicial Review.** No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.

## STATEMENT OF THE CASE

On March 2, 2012, Lomax was found guilty of two counts of armed robbery in violation of *La. R.S. 14:64*. He was subsequently sentenced to concurrent terms of 60 years at hard labor without the benefits of probation, parole, or suspension of sentence.

Lomax timely but unsuccessfully appealed his convictions and sentences to the state appellate and supreme courts. Lomax also timely launched an unsuccessful collateral attack of his convictions and sentences.

On October 24, 2016, Lomax filed a timely petition for Writ of Habeas Corpus to the Federal Eastern District Court of Louisiana. On August 15, 2017, that court denied habeas relief. Lomax then appealed to the Louisiana Federal Fifth Circuit Court of Appeals on September 18, 2017, that court also denied habeas relief on May 3, 2018.

On October 31, 2011, at approximately 12:16 p.m., the Whitney Bank on Marigny and Florida streets in Mandeville was robbed.<sup>1</sup> The bank robber was covered up and no one was able to identify him.

On November 1, 2011, Lomax attempted to make a Western Union transfer at a Winn Dixie. Katrina Holden was working the customer service desk that day.<sup>2</sup> When Lomax handed Ms. Holden the money for the Western Union transaction she noticed that the money “had pink or red stain on it.”<sup>3</sup> Ms. Holden also thought Lomax’s hands

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<sup>1</sup>R. pp. 307, 314.

<sup>2</sup>R. p. 355.

<sup>3</sup>R. p. 355.

were stained "like, pinkish."<sup>4</sup> Ms. Holden then went to the manager's office and called the store director who in turn called the police.<sup>5</sup> Ms. Holden testified that there was "nothing unusual" about Lomax's demeanor.<sup>6</sup>

Deputy Stephen Paretti of the St. Tammany Parish Sheriff's Office was dispatched to the Winn Dixie and was the first officer to arrive.<sup>7</sup> Officer Paretti testified that he was dressed in his "Class B uniform," which "is a rip-stop uniform, tactical pants, drop holster or thigh holster that comes down for tactical use."<sup>8</sup> Paretti further testified that he was carrying an "M-4 commando-style machine gun."<sup>9</sup> As Lomax exited the Winn Dixie, Officer Paretti made eye contact with him.<sup>10</sup> Lomax then turned around and went back into the store.<sup>11</sup> Officer Paretti then entered the Winn Dixie brandishing his "machine gun."<sup>12</sup> When Paretti saw Lomax at the rear of the store he "raised [his] rifle" and

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<sup>4</sup>R. p. 356.

<sup>5</sup>R. p. 359.

<sup>6</sup>R. p. 359.

<sup>7</sup>R. pp. 364-65.

<sup>8</sup>R. p. 367.

<sup>9</sup>R. p. 368.

<sup>10</sup>R. p. 366.

<sup>11</sup>R. p. 367.

<sup>12</sup>R. p. 368.

“began giving loud verbal commands” to “get on the ground.”<sup>13</sup> Lomax complied but Officer Paretti “assisted him further onto the ground.”<sup>14</sup>

Corporal Impastato handcuffed Lomax while Officer Paretti kept his machine gun pointed at him.<sup>15</sup> Paretti testified that Lomax was patted down and “lifted off the ground by [him] and Corporal Impastato.”<sup>16</sup> Lomax “immediately asked [Officer Paretti] what was going on,” at which time Officer Paretti *Mirandized* Lomax.<sup>17</sup> Lomax was then escorted out of the store, transported to the Mandeville Police Criminal Investigations Office, and placed in the interview room.<sup>18</sup>

#### **REASONS FOR GRANTING THE PETITION**

Under Rule 10(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court as set forth below:

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<sup>13</sup>R. p. 242.

<sup>14</sup>R. p. 242.

<sup>15</sup>R. p. 369.

<sup>16</sup>R. p. 242.

<sup>17</sup>R. p. 369; *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>18</sup>R. p. 252.

**Issue No. 1: Lomax was denied the effective assistance of counsel when his trial counsel failed to argue that the police lacked probable cause to arrest him at the Winn Dixie.**

Officer Paretti's and Corporal Impastato's testimony clearly indicate that Lomax was arrested at the Winn Dixie store. Officer Paretti was decked out in tactical gear when he pointed his "machine gun" at Lomax and yelled at him to get on the ground.<sup>19</sup> Even though Paretti testified that Lomax was complying, Paretti nevertheless "assisted [Lomax] further to the ground."<sup>20</sup> Corporal Impastato then handcuffed Lomax while Paretti kept his machine gun pointed at him.<sup>21</sup> Paretti and Impastato then hoisted the handcuffed Lomax from the ground, advised him his Miranda rights, and immediately transported him to the police station.<sup>22</sup> There is no question this constitutes an arrest.

This honorable Court has long ago held that a warrantless arrest is constitutionally valid only if the officers had probable cause "at the moment the arrest was made."<sup>23</sup> Probable cause to arrest exists when the facts and circumstances known to the arresting officer are sufficient to justify a man of ordinary caution in believing that the person has committed a crime.<sup>24</sup> "It is basic that an arrest with or without a warrant must stand

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<sup>19</sup>R. p. 242.

<sup>20</sup>R. p. 242.

<sup>21</sup>R. p. 369.

<sup>22</sup>R. pp. 242, 252, 369.

<sup>23</sup>*Beck v. Ohio*, 379 U.S. 89, 91 (1964).

<sup>24</sup>*State v. Cojoe*, 01-2465 (La. 10/25/02), 828 So.2d 1101, 1104; *Beck v. Ohio*, 379 U.S., at 90.

upon firmer ground than mere suspicion," and that the police may not seek to verify mere suspicions by means that approach the conditions of arrest.<sup>25</sup>

At the time of Lomax's arrest Officer Paretti had only two possible justifications for detaining Lomax. The first was the same reason Officer Paretti was dispatched to the Winn Dixie in the first place, i.e., a cashier told her manager that a customer had money and hands that appeared to be tinged red. The second reason was Lomax's actions in abruptly reentering the store after seeing Officer Paretti dressed in full tactical gear brandishing an "M-4 commando-style machine gun."

Although these two facts or circumstances may have given Officer Paretti the requisite minimal level of objective justification for an investigatory stop based on reasonable suspicion of criminal activity, they were not sufficient to justify a man of ordinary caution in believing that Lomax had committed a crime.<sup>26</sup> Of course, conclusive evidence of guilt is not necessary to establish probable cause. However, "[m]ere suspicion, common rumor, or even strong reason to suspect are not enough."<sup>27</sup>

The fact that a Winn Dixie cashier told her manager that Lomax appeared to have red tinged money and hands did not give Officer Paretti probable cause to arrest him. Additionally, Lomax's nervous actions in reentering the store is hardly significant considering the circumstances. Officer Paretti's own testimony established that he was

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<sup>25</sup>Wong Sun v. United States, 371 U.S. 471, 479 (1963) (citing Henry v. United States, 361 U.S. 98, 101 (1959)); Kaupp v. Texas, 538 U.S. 626, 630 (2003) (citing United States v. Sokolow, 490 U.S. 1, 7, (1989)).

<sup>26</sup>United States v. Sokolow, *supra*, 490 U.S., at 7.

<sup>27</sup>McKenzie v. Lamb, 738 F.2d 1005, 1008 (9th Cir.1984) (citing Henry v. United States, *supra*, 361 U.S., at 101).

completely decked out in tactical gear and brandishing an “M-4 commando-style machine gun.”<sup>28</sup> Whether it was immediately apparent that Officer Paretti was a police officer or not, such an image would be very startling to most civilians. In any event, reasonable suspicion for an investigatory stop requires more than “looking nervous.”<sup>29</sup> Probable cause for an arrest is a substantially higher threshold than the “minimal level of objective justification” required for an investigatory stop based on reasonable suspicion.

It should be noted that Officer Paretti repeatedly attempted to inject Lomax's car into the probable cause equation. Officer Paretti claimed that as soon as he arrived at the Winn Dixie he “observed a four-door sedan that fit the color and the make of the vehicle that was broadcasted or BOLO'd to [his] agency that was possibly involved in the armed robbery that occurred on the 31st of October.”<sup>30</sup>

The problem with Officer Paretti's assertion is that Kathy Jatho, the only witness who was alleged to have seen the perpetrator's car, did not give a possible make and only described the color of the car as “dark colored, possible dark green in color.” Lomax drove a “purple car with 'flashy rims.'” Ms. Jatho never said anything about “flashy rims.”

According to Officer Paretti, the Sheriff's Office issued a “be on the lookout” for a dark colored car, possible dark green in color. Now it is highly improbable that the Sheriff's Office would issue a BOLO for such a general description, even if such a BOLO

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<sup>28</sup>R. pp. 367-68.

<sup>29</sup>*State v. Temple*, 02-1895 (La. 9/9/03), 854 So.2d 856, 861.

<sup>30</sup>R. p. 370.

was actually broadcasted, it most certainly would not have led Officer Paretti to notice Lomax's "purple car with flashy rims" upon his arrival at the Winn Dixie.

Officer Paretti further claimed that as he and Lomax exited the store he "pointed to a maroon-colored four-door sedan with chrome rims" and asked Lomax "if he drove here in that vehicle."<sup>31</sup> Paretti's testimony is self-impeaching. Again, Paretti could not have noticed Lomax's car from such a vague BOLO description—if one was even broadcasted.

Officer Paretti also claimed that once Lomax was handcuffed, a Winn Dixie clerk "told [him] that [Lomax] was trying to conceal something in one of the grocery isles in the area where [the police] made contact with [him]."<sup>32</sup> According to Officer Paretti, he had another deputy stay at the location where Lomax was arrested until the crime lab division went into the store and retrieved the crumpled and torn Western Union receipt.<sup>33</sup> According to Corporal Ryan Impastato, it did not quite happen that way. Corporal Impastato wrote in his report that "Dfc Meyers conducted a protective sweep of the store and observed torn pieces of paper near the area where Lorenzo Lomax was apprehended. Upon further investigation, Dfc Meyers identified the torn pieces of paper as the receipt from Lorenzo Lomax's Western Union transaction."

Of further significance, the money Lomax used at the Winn Dixie was not stained because it did not come from the bank robbery. Lomax told his trial counsel, as well as

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<sup>31</sup>R. pp. 243-44.

<sup>32</sup>R. p. 245.

<sup>33</sup>R. p. 247.

the detectives who interrogated him that the money he tried to wire at the Winn Dixie came from a Capital One bank as a result of a check he cashed. The photographs the police took of the money retrieved from Winn Dixie are of good quality, were taken in good lighting, and unequivocally show that the money is perfectly normal and not stained. It should also be noted that on one of the \$1 bills there appears to be a small red smudge that looks like marker or paint. However, the \$100 bill, \$50 bill, twelve \$20 bills, and the other \$1 bills have no markings whatsoever.

Why the Winn Dixie cashier thought the money was stained is unknown. Perhaps she was unaware that the U.S. Mint had recently started to make \$20 bills that were colored pink and blue—much the same as the newer \$50 bills. About half of the \$20 bills Lomax tried to use at the Winn Dixie were of this newer design.

However, the photographs make it very clear that the pink was the actual color of the bill and not merely a stain. This is particularly so given the way the bills were laid out—lined up evenly with one bill directly above the next. The photographs reflect that the \$20 bills are colored blue on either end and pink in the middle. On each of the \$20 bills the blue fades and the pink starts at exactly the same location as every other (newer) \$20 bill. Bottom line, the money Lomax had at the Winn Dixie did not come from the bank robbery and was not stained.

Detective Joseph Downs also claimed the money Lomax had at Winn Dixie “had a reddish-pinkish tint to it.”<sup>34</sup> The photographs that were taken by the Mandeville Police Department clearly refute Detective Downs’ testimony.

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<sup>34</sup>R. p. 251.

The standard of review for a claim of ineffective assistance of counsel set out in *Strickland v. Washington* requires a reviewing court to reverse a conviction if the defendant establishes: (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceedings would have been different.<sup>35</sup> This reasonable probability standard does not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome in the case.<sup>36</sup>

Lomax's trial counsel's performance fell below an objective standard of reasonableness when he: 1) failed to argue that Lomax's initial arrest was illegal; 2) failed to impeach Officer Paretti's blatant attempts to retroactively establish probable cause for Lomax's arrest, e.g., Paretti's demonstrably false assertion that he noticed Lomax's car upon his arrival at the Winn Dixie as being previously BOLO'd; 3) failed to call Corporal Impastato and Dfc Meyers to testify to impeach Paretti's account of how the Western Union receipt was found; 4) failed to have the money that Lomax had at the Winn Dixie tested in order to prove that it did not have bank dye on it and that the cashier was simply mistaken. In fact, trial counsel failed to have Lomax's hands tested to determine if had dye on it.

Had Lomax's trial counsel performed in a reasonably effective manner, there is a reasonable probability that all of the evidence obtained after Lomax's arrest would have

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<sup>35</sup>466 U.S. 668, 688, 694 (1984).

<sup>36</sup>466 U.S., at 693.

been suppressed. As indicated above, Officer Paretti did not have probable cause to arrest Lomax. “[A] confession ‘obtained by exploitation of an illegal arrest’ may not be used against a criminal defendant.”<sup>37</sup>

Thus, Lomax has demonstrated that he was denied the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution.

**Issue No. 2: Lomax was denied the effective assistance of counsel when his trial counsel failed to challenge the Affidavit in Support of Search Warrant that contained intentional false statements with a reckless disregard for the truth.**

Ordinarily, evidence obtained from a search is admissible where probable cause for a search warrant is founded on inaccurate information, so long as the officer’s reliance on the warrant is objectively reasonable.<sup>38</sup> One exception to this rule is where the affidavit that supports the warrant contains material false statements or omissions.<sup>39</sup> A misstatement can vitiate an affidavit only where the misrepresentations are the product of “deliberate falsehood or of reckless disregard for the truth.”<sup>40</sup> The court must then consider whether the remaining portion of the affidavit is sufficient to support a finding of probable cause.<sup>41</sup> After omitting all intentional or reckless falsehoods the issue is whether the affidavit contains facts from which the magistrate could make an

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<sup>37</sup> *Kaupp v. Texas*, *supra*, 538 U.S., at 627 (citing *Brown v. Illinois*, 422 U.S. 590, 603 (1975)). See also *Dunaway v. New York*, 442 U.S. 200 (1979).

<sup>38</sup> See *United States v. Leon*, 468 U.S. 897, 919-20 (1978).

<sup>39</sup> *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978).

<sup>40</sup> *Franks v. Delaware*, 438 U.S., at 171.

<sup>41</sup> *Franks v. Delaware*, 438 U.S., at 155-56; *United States v. Brown*, 298 F.3d 392, 395 (5th Cir. 2002).

informed and independent judgment as to whether probable cause existed and whether there was a substantial basis for the determination that probable cause did exist.<sup>42</sup>

Lomax's trial counsel filed a blanket Motion to Suppress Evidence three days before trial began.<sup>43</sup> Counsel called one witness and did not present any argument.

In denying Lomax's Motion To Suppress Evidence, the trial court noted that "[i]t's the defendant's burden of proof in connection with a Motion to Suppress where there is a search warrant, and there has been no proof offered by the defendant today that the search warrant or the affidavit in connection therewith was invalid or insufficient. Therefore, the Motion to Suppress is denied."<sup>44</sup>

Trial counsel failed to point out that Detective Joseph Downs' Affidavit in support of the Search Warrant for Lomax's house contained fraudulent and deceptive statements with a reckless disregard for the truth. Specifically, Det. Downs swore that Lomax "stated that currency obtained in the robbery was concealed within his residence, 1528 Clover St." This is a blatant lie. Lomax denied, at least three times, that any money was at his residence on Clover Street.

On February 4, 2015, Lomax and an inmate counsel viewed portions of Lomax's interrogation by the Mandeville Police Department that took place on November 1, 2011. The following is the relevant colloquy, transcribed by the inmate counsel, to the best of

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<sup>42</sup>*Illinois v. Gates*, 462 U.S. 213, 238-39 (1983).

<sup>43</sup>R. p. 29.

<sup>44</sup>R. pp. 289-90.

his ability in the limited time the Legal Programs Department allowed him and Lomax to use the laptop computer:

Lomax: They pretty much left some money in there.  
Detective: And that was the money you was up in there with at the store?  
Lomax: No.  
Detective: So did these people leave some money in that house? Did they leave a lot of money in that house?  
Lomax: Yes, I'm pretty sure they did.  
Detective: Did you see some money in that house that had a little red stuff on it?  
Lomax: Yes, sir. I can't deny that.  
Detective: Is it at Clover, the rest of the money is at Clover?  
Lomax: No. Not that I know of. Maybe they took it with them.  
Detective: A bunch of money is at Clover Street?  
Lomax: No.  
Detective: Is there any money at Clover Street with red stuff on it?  
Lomax: No.  
Detective: I need you to help me.  
Lomax: Not that I know of.<sup>45</sup>

Although Lomax admitted "some people" left some money in "that house" that "had a little red stuff on it," when he was asked specifically about the house on Clover Street, Lomax denied that any money was there, stained or otherwise, at least three times. Yet Detective Downs swore that Lomax "stated that currency obtained in the robbery was concealed within his residence, 1528 Clover St." This was a deliberate, false statement.

Detective Downs' Affidavit is also intentionally deceptive regarding the probative value of the License Plate Recognition (LPR) system which recorded Lomax's vehicle. In his Affidavit, Det. Downs states that, "[d]uring the investigation, Detectives accessed

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<sup>45</sup>The video recording of this discussion is located on the CD-ROM that is marked "I-28 Lomax 001 to 003." The actual name of the file is "Lomax 001." The relevant time frame is approximately 15:30 through 15:34 (as it appears on the screen.).

the LPR system which captured the license plate numbers of vehicle [sic] North bound on Hwy 59. A list was compiled of numerous vehicles. One vehicle on the list which was captured was a 2004 Chrysler 4dr, bearing CA plate 6PCU614 at 1219 hrs on 10/31/11. The vehicle registration returns to a Lorenzo Lomax from California.”

However, Det. Downs' Affidavit omitted the fact that Lomax's residence at Clover Street is less than three miles from the LPR camera that recorded his car. Downs' Affidavit does not indicate the exact address of the LPR camera. According to the State, the LPR camera is at the corner of Highway 59 and Caroline Street.<sup>46</sup> That would put the LPR camera at approximately four-tenths of a mile from the bank. During his testimony Det. Downs acknowledged that Lomax's house on Clover Street is “approximately two-and-a-half miles” from the location of the Whitney Bank.<sup>47</sup> This means that even if Lomax's house and the LPR camera are in opposite directions, in relation to the bank, the Clover Street address would be approximately two-point-nine miles from the LPR camera. Is it really significant that a red light camera saw Lomax's car less than three miles from his house?

Down's Affidavit also omits the fact that the money Lomax tried to wire at the Winn Dixie was not stained and looked perfectly normal. The photographs taken by the Mandeville Police Department prove this beyond all doubt.

After omitting Detective Downs' intentional and reckless falsehoods, the remaining portion of his Affidavit does not contain any “facts from which the magistrate could make

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<sup>46</sup>R. p. 573.

<sup>47</sup>R. p. 453.

an informed and independent judgment as to whether probable cause existed and if there was a substantial basis for her determination that probable cause did exist.”<sup>48</sup>

Applying the *Strickland* analysis to the facts of Lomax’s case is rather straightforward. There is no possible strategic reason for trial counsel’s failure to challenge Det. Downs’ intentional and reckless falsehoods. Had counsel actually pointed out Det. Downs’ intentional and reckless statements, there is a reasonable probability that all of the evidence obtained after Lomax’s arrest, including the red-stained money from the house, would have been suppressed.<sup>49</sup>

Lomax has established his trial counsel’s performance fell below the Sixth Amendment standard and that he suffered prejudice as a result.

**Issue No. 3: The State court’s decision denying Lomax’s Application for Post-Conviction Relief without an evidentiary hearing was an objectively unreasonable application of clearly established federal law.**

The state court’s summary dismissal of Lomax’s Application for Post-Conviction Relief is indicative of judicial bias and is a blatant attempt to prevent police misconduct from being aired at an evidentiary hearing.

Louisiana Code of Criminal Procedure Article 928 provides that the only instance in which an application for post-conviction relief may be dismissed without requiring the State to file an answer is when the application “fails to allege a claim which, if established, would entitle the petitioner to relief.”

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<sup>48</sup>*Moreno v. Dretke*, 450 F.3d 158, 169 (5th Cir. 2006).

<sup>49</sup>See *Franks v. Delaware*, *supra*; *Wong Sun v. United States*, *supra*.

In his Application for Post-Conviction relief, Lomax alleged two specific ineffective assistance of counsel claims that are substantially supported by the record. Either of Lomax's IAC claims, if established, would result in the suppression of all of the evidence introduced at Lomax's trial.

Further evidence of the state court's bias comes from its contradictory ruling on Lomax's Request for Admissions and his Application for Post-Conviction Relief. On the one hand, the state court ruled that Lomax "failed to carry his burden of proof pursuant to Louisiana Code of Criminal Procedure Article 930.2." Yet the state court also denied Lomax's Request for Admissions because Lomax allegedly did not show "good cause" for utilizing such procedures.

To hold a petitioner has not met his burden of proof and then also deny him an opportunity to utilize discovery procedures to expand the record is illogical. Regardless, Lomax has carried his burden of proof because he has made a substantial showing that the police officers involved in his case lied about several material facts. Even so, Lomax made a good-faith attempt to clarify the factual disputes by submitting a Request for Admissions.

Prominent Louisiana attorney James E. Boren authored a Louisiana Law Review that cogently details the politics and judicial bias that permeates Louisiana appellate courts and the court's resulting inability (or refusal) to vindicate the constitutional rights of criminal defendants.<sup>50</sup> Likewise, judicial bias is the only tenable reason for the state

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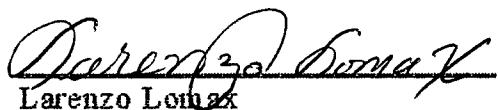
<sup>50</sup>James E. Boren & Michael A. Fiser, *Fear of A Paper Tiger: Enforcing Louisiana's Procedural and Statutory Rules in the Wake of Harmless Error Analysis*, 64 La. L. Rev. 5 (2003).

court's denial of Lomax's IAC claims without the benefit of an evidentiary hearing and without requiring the State to file an answer in opposition.

### CONCLUSION

For the foregoing reasons Lomax's petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Lorenzo Lomax

Date: July 3, 2018